

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL NO. 3:06-CV-00218-W**

BOGOPA SERVICE CORP., a New York)
Corporation,)
)
Plaintiff,)
)
vs.)
)
FOOD BAZAAR, INC., a North Carolina)
Corporation,)
)
Defendant.)
)

ORDER

THIS MATTER comes now before the Court upon Memorandum and Recommendation (M&R) of United States Magistrate Judge Carl Horn, III, recommending that Defendant's "Motion to Dismiss" (Doc. No. 9), filed July 7, 2006, be denied as moot and that Defendant's Motion to Dismiss First Amended Complaint (Doc. No. 19), filed September 22, 2006, be denied without prejudice to Defendant's right to reassert the same issue in a dispositive motion filed after the close of discovery. The time for filing objections as provided in 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b) has expired, and no objections have been filed by either party.

The district court conducts a *de novo* review of those portions of a magistrate judge's M&R to which specific objections are filed. 28 U.S.C. § 636(b). "[I]n the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005). Upon careful review of the record, "the court may accept, reject, or modify, in whole or in part, the findings or recommendations

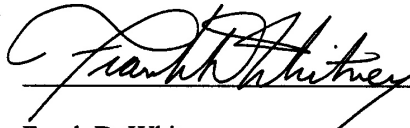
made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(c).

After a careful review of the record, the Court finds that the magistrate judge’s findings and recommendations are neither clearly erroneous nor inconsistent with governing law. Thus, the Court hereby accepts the M&R of Magistrate Judge Horn and adopts it as the final decision of this Court for all purposes relating to this case.

IT IS, THEREFORE, ORDERED that Defendant’s Motion to Dismiss (Doc. No. 9) be DENIED AS MOOT, and Defendant’s Motion to Dismiss First Amended Complaint (Doc. No. 19) be DENIED WITHOUT PREJUDICE to Defendant’s right to reassert the same issue in a dispositive motion filed after the close of discovery.

IT IS SO ORDERED.

Signed: January 3, 2007



Frank D. Whitney
United States District Judge

